



DELTA STEWARDSHIP COUNCIL

A California State Agency

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October 10, 2014

Chair
Randy Fiorini

Mr. Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Sacramento, CA 95814

Members
Aja Brown
Frank C. Damrell, Jr.
Phil Isenberg
Patrick Johnston
Larry Ruhstaller
Susan Tatayon

Executive Officer
Jessica R. Pearson

RE: Water Supply Contract Extension Project, Notice of Preparation

Dear Mr. Alvarez:

The Delta Stewardship Council (Council) welcomes the opportunity to comment on the Notice of Preparation (NOP) for the Environmental Impact Report (EIR) of the Water Supply Contract Extension Project being prepared by the Department of Water Resources (DWR). The Council has appreciated the opportunities to observe and participate in the Contract Negotiation Sessions starting in May of 2013, and looks forward to continuing to engage with DWR on this project as it moves forward.

The Delta Stewardship Council is an independent agency tasked with furthering the State's coequal goals through the adoption and implementation of the Delta Plan, the regulatory portions of which became effective on September 1, 2013. As you know, the State's coequal goals for the Delta, improve statewide water supply reliability and protect and restore a vibrant and healthy Delta ecosystem, must be achieved in a manner that preserves, protects and enhances the unique agricultural, cultural, and recreational characteristics of the Delta.

In developing the forthcoming EIR, we suggest DWR consider the following comments:

- **Please consider the entire geographical range of the project's study area when developing alternatives.** This project will extend the 29 State Water Project (SWP) long-term water supply contracts for an additional 50 years beyond the current contract term, and will do so without modifying the existing Table A water entitlements. As described in the NOP, those contracts – through which the 29 contractors receive SWP water in return for payment of capital and maintenance costs – have a significant statewide reach. *"Over 25 million Californians and 750,000 acres of agricultural land utilize water from the SWP...The SWP is also operated to improve water quality in the Sacramento-San Joaquin Delta, control flood waters, generate electricity, provide recreation, and enhance fish and wildlife."* Therefore, the geographical study area and potential range of alternatives should include not only the SWP facilities and the SWP Contractor service areas, but should also include the Sacramento-San Joaquin Delta and the

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

Delta watershed which serves as the source of the water delivered to the 29 Contractor service areas.

- **When updating the environmental setting and baseline, the EIR should consider and incorporate, as appropriate, all relevant scientific, environmental and other information developed in connection with recently completed and pending water management plans and projects.** The previous EIR containing baseline information pertaining to changes to the Water Supply Contracts was completed in 2003. However the baseline information referenced in this document was from 1995. There have been significant changes in the environmental and regulatory settings in the past decade and this should be reflected in the upcoming EIR. In updating the environmental setting and baseline, the Council suggests DWR also consider: the baseline presented in the Delta Plan's EIR, relevant studies conducted for the Bay Delta Conservation Plan (BDCP); any significant state or federal storage projects that could impact the SWP's operations; any other significant state or federal plan which may affect the Delta; and the effects of climate change and possible sea level rise to this region.
- **When updating the regulatory setting, the EIR should consider and incorporate all the recent state and federal Delta-related regulations.** The Council suggests DWR also consider: the most recent federal Delta Smelt and Salmonid Biological Opinions; the Sacramento-San Joaquin Delta Reform Act of 2009, which defines the States policies with respect to coequal goals and managing the Delta's water resources over the long term; and the Delta Plan and its regulatory policies.
- **The EIR should evaluate how the project contributes to the achievement of the coequal goals.** The Delta Plan defines the achievement of the coequal goals in Title 23 of the California Code of Regulations, Sections 5001(h)(1) and (2):
 - (1) "Achieving the coequal goal of providing a more reliable water supply for California" means all of the following:
 - (A) Better matching the state's demands for reasonable and beneficial uses of water to the available water supply. This will be done by promoting, improving, investing in, and implementing projects and programs that improve the resiliency of the state's water systems, increase water efficiency and conservation, increase water recycling and use of advanced water technologies, improve groundwater management, expand storage, and improve Delta conveyance and operations. The evaluation of progress toward improving reliability will take into account the inherent variability in water demands and supplies across California;
 - (B) Regions that use water from the Delta watershed will reduce their reliance on this water for reasonable and beneficial uses, and improve regional self-reliance, consistent with existing water rights and the State's area-of-origin statutes and Reasonable Use and Public Trust Doctrines. This will be done by improving, investing in, and implementing local and regional projects and programs that increase water conservation and efficiency, increase water recycling and use of advanced water technologies, expand storage, improve groundwater

management, and enhance regional coordination of local and regional water supply development efforts; and

- (C) Water exported from the Delta will more closely match water supplies available to be exported, based on water year type and consistent with the coequal goal of protecting, restoring, and enhancing the Delta ecosystem. This will be done by improving conveyance in the Delta and expanding groundwater and surface storage both north and south of the Delta to optimize diversions in wet years when more water is available and conflicts with the ecosystem are less likely, and limit diversions in dry years when conflicts with the ecosystem are more likely. Delta water that is stored in wet years will be available for water users during dry years, when the limited amount of available water must remain in the Delta, making water deliveries more predictable and reliable. In addition, these improvements will decrease the vulnerability of Delta water supplies to disruption by natural disasters, such as, earthquakes, floods, and levee failures.
- (2) "Achieving the coequal goal of protecting, restoring, and enhancing the Delta ecosystem" means successfully establishing a resilient, functioning estuary and surrounding terrestrial landscape capable of supporting viable populations of native resident and migratory species with diverse and biologically appropriate habitats, functional corridors, and ecosystem processes.

If the project results in significant impacts to the achievement of the coequal goals, and DWR determines that this project is a covered action under the Delta Plan, DWR would need to certify consistency with the Delta Plan's regulatory policies.

- **The Project description should include the specific projects or actions that DWR anticipates will require the selling of bonds and those that will benefit from the extended contract term.** Under the current Water Supply Contracts all the outstanding bond debt would be repaid when the current contract terms expire. To better put in perspective the need for this long term extension a description of the projects or actions related to capital improvements and operation and maintenance of the existing facilities would be helpful, as would, a description of any anticipated new facilities or significant rehabilitation of existing facilities.

We look forward to working with DWR on this project. If you would like to discuss any of the suggestions included in this letter, please contact Kevan Samsam at ksamsam@deltacouncil.ca.gov or (916) 445-5011.

Sincerely,



Cindy Messer
Deputy Executive Officer

County Of Santa Barbara

Mona Miyasato
County Executive Officer



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Executive Office

October 7, 2014

Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Sacramento, CA 95814

Re: Notice of Preparation – Water Supply Contract Extension Project Environmental Impact Report

Dear Mr. Alvarez:

Thank you for the opportunity to comment on the Notice of Preparation for the Department of Water Resources' Water Supply Contract Extension Project Environmental Impact Report. At this time, the County is submitting the attached letters from the County Fire Department and the Public Works Department.

The County has no further comments on this project at this time and looks forward to hearing more about the project's progress. If you should have any further questions, please do not hesitate to contact my office directly or David Lackie, Interim Deputy Director in the Office of Long Range Planning, at 805-568-2023.

Sincerely,



Mona Miyasato
County Executive Officer

cc: Martin Johnson, Deputy Fire Marshal, Fire Department
Bret Stewart, Senior Development Engineer, Public Works Department
David Lackie, Interim Deputy Director, Long Range Planning Division

Attachment: October 1st Letter, Fire Department
September 30th Letter, Public Works Department

Renée E. Bahl
Assistant County Executive Officer
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Terri Maus-Nisich
Assistant County Executive Officer
tmaus@countyofsb.org



Fire Department

"Serving the community since 1926"

HEADQUARTERS

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Michael W.Dyer
Fire Chief
County Fire Warden

Eric Peterson
Deputy Fire Chief

October 1, 2014

Mr. Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Sacramento, CA 95814

Dear Mr. Alvarez:

SUBJECT: Water Supply Contract Extension Project

I have reviewed the above referenced project and have no conditions or objections to this project as presented at this time.

As always, if you have any questions or require further information, please call 681-5525 or 681-5523.

In the interest of life and fire safety,

Martin Johnson
Deputy Fire Marshal

MJ: mkb

PUBLIC WORKS MEMORANDUM



To: Katie Hentrich, Long Range Planning
From: ^{BAW}Bret A. Stewart, P.E., Senior Development Engineer
Date: September 30, 2014
Subject: RAR - Department of Water Resources (DWR) EIR NOP for the Water Supply Contract Extension Project

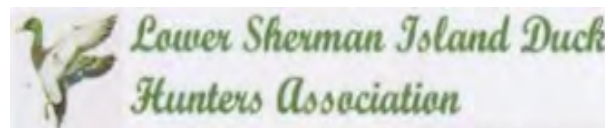
Public Works has reviewed the referenced document and recommends the following comment be included in the comment letter:

1. As part of the proposal, DWR should include in the EIR an analysis of the economic and legal impacts and implications relative to the continued pre-Prop 13 taxing authority with the Contract Extension Project; i.e., what are the impacts of assuming an extension of pre-Prop 13 taxing authority. The County is concerned that if a contractor default should occur, the County would be liable for covering the default without the taxation ability that exists under the current contract because of its pre-Prop 13 legal status.



CRAB BOAT OWNERS ASSOCIATION, Inc.
2907 Jones Street
San Francisco, California 94133-1115
415-885-1180

CA Save Our Streams Council

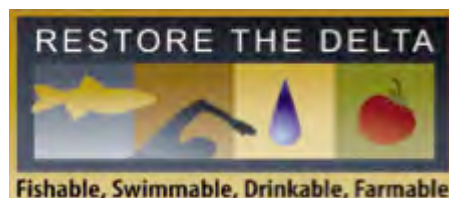


NORTH

COAST

RIVERS

ALLIANCE



Coalition Scoping Comments on Water Supply Contract Extension

October 10, 2014

Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Sacramento, CA 95814

E-mailed to ted.alvarez@water.ca.gov

Subject: Scoping Comments on EIR for Water Supply Contract Extension and Negotiated Agreement in Principal (AIP) Project (Contract Extension)¹

Dear Mr. Alvarez:

The undersigned groups represent hundreds of thousands of ratepayers and taxpayers throughout the State. We appreciate the opportunity to comment on this proposed project that includes amending certain provisions of the State Water Resources Development System (SWRDS) Water Supply Contracts (SWP Contracts) to among other things, extend the term of the contracts. SWRDS (defined in Water Code Section 12931), or more commonly referred to as the State Water Project (SWP), was enacted into law in the Burns-Porter Act.

The California Department of Water Resources (DWR) is the lead agency to assess the environmental impact of extending the SWP contracts for an additional 50 years as contemplated under The Project and AIP, which has not been approved by all of the existing 29 State Water Contractors (SWP Contractors).

The proposed changes must be evaluated with the benefit of historical knowledge. Some 75 years ago with various amendments adopted since², DWR and each of the SWP Contractors entered into SWP Contracts in the 1960's with the expectation to achieve full payment of the then estimated \$1.75 billion dollar cost, but which at the present time has more than quadrupled. Despite being generally uniform, there are significant contract differences and different amendments to the various individual contracts that have been made over time, including the Monterey Plus Amendments that are currently under court challenge.³ Because the first SWP Contract—executed by DWR and Metropolitan Water District of Southern California (MWD)—terminates in 2035, DWR has determined that this date limits the debt issuance timeframe for all contracts. All SWP contracts will terminate by 2042. Thus the contract extension proposed in the AIP could provide a debt term of up to 2085 (2035 plus 50 years) where ratepayers and taxpayers would be obligated to continue to fund the SWP project and an as yet undefined list of capital projects.

¹ http://www.water.ca.gov/swpao/watercontractextension/docs/00202-AIP_Concerning_Extension_of_SWP_Water_Supply_Contracts_Execution_Version_6-18-2014.pdf

² See Preliminary Official Statement Dated September 19, 2014—\$652 Million, State of California Department of Water Resources Central Valley Project Water System Revenue Bonds Series AS pages 43-52

³ <http://calsport.org/news/court-strikes-down-environmental-review-of-kern-water-bank/>

Coalition Scoping Comments on Water Supply Contract Extension

Through the AIP, the SWP Contractors wish to rely on the State of California credit rating and continue to have DWR sell revenue bonds for some as yet to be specified SWP operation, maintenance and construction projects for another 50 years into the future. Moreover, they would accomplish this by creating a non-public “financing committee” consisting of specified contractors with those who receive the greatest “water entitlements” having prime membership and concentrated influence. The project would extend the termination dates of all SWP contracts with unknown impacts to ratepayers and taxpayers under “take or pay” contracts that guarantee property tax levies for the amounts borrowed if ratepayer revenues are insufficient. The stated objective is to “*ensure DWR can continue to affordably finance SWP expenditures well into the future.*” These expenditures and proposed “operation, maintenance and construction” projects, however, remain undefined. The estimated amounts of ratepayer and taxpayer debt and revenue needed for these as yet to be defined projects for some 50 additional years also remains undefined.

The undersigned groups adopt by reference previous comments sent to DWR during the SWP Contract Extension negotiating sessions, where issues and impacts to the environment were raised and need to be addressed by the proposed project.⁴ Additionally the undersigned groups have additional concerns that need to be addressed in six key areas:

1. The nature and scope of the projects being funded and associated revenue requirements need to be clearly defined.
2. The “no project” alternative needs to be clearly defined and evaluated.
3. The full range of project alternatives needs to be identified, described, and evaluated.
4. The impacts to SWP contractors who choose not to sign the proposed contract extension must be clearly explained, defined and justified in terms of Table A allocations, conveyance capacity and the ability to transfer water supplies. Scare tactics are currently being used to coerce SWP contractors into supporting the contract extension and the Bay-Delta Conservation Plan (BDCP).
5. The Contract Extension and Negotiated AIP project appears to piecemeal multiple poorly defined projects, apparently attempting to avoid the legally required assessment of cumulative impacts.
6. The impact on fish and wildlife from Objective 3(d) in the AIP whereby the SWP contractors would no longer be responsible for funding certain fish and wildlife and recreation impacts from the projects.

Each of these concerns is described in more detail below.

1. The Nature and Scope of the Projects Being Funded and Associated Revenue Requirements Need to be Clearly Defined:

The single most critical concern we have with the proposed Contract Extension is that there is no clear plan for what “projects” would be funded by the increased revenue, nor what the revenue requirements are, and thus the potential impacts cannot possibly be evaluated.

⁴ http://www.water.ca.gov/swpao/watercontractextension/public_comments.cfm

July 3, 2013 comment letter; July 11, 2013 comment letter; September 23, 2013 email comment; January 29, 2014 comment letter and March 3, 2014 comment letter.

Coalition Scoping Comments on Water Supply Contract Extension

Critical to a determination of whether a project has significant impacts is the definition of the project itself. The proposed contract changes will obligate taxpayers and ratepayers to pay for unspecified capital projects with unspecified impacts. Objective 3C of the AIP eliminates the January 1, 1987 date for existing facilities within Article 1(hh). This will open the door to financing projects with unknown impacts and costs. The amount of debt and payment under the proposed changes for each contractor is tied to a formula for an unrealistic amount of project yield. Ratepayers and taxpayers, along with decision makers, need to know the capital costs proposed to be financed with the proposed changes. In addition to the amount of revenue needed to fund the existing SWP capital projects, it appears that the contract extension may also fund future SWP capital projects. These expenditures, revenues and costs for these proposed projects must be defined. Without an accurate description of the capital project needs, ratepayers, taxpayers and decision makers would be asked to provide financing for what amounts to a blank check.

As one example, financing a blank check of debt would have significant impacts on local land use planning. Land use decisions are predicated in large part on assumptions about the available water supply. Nature has not provided the water assumed under the existing SWP project. This paper water is an illusion. Revenues continue to be based on these imaginary entitlements for the build out of a project that has not happened and probably never will. The Contract Extension by definition should not continue to promote this fantasy. Ratepayers have a right to know the realistic costs of the existing SWP project, operation and maintenance costs and proposed future projects all to be funded by this contract extension.

A possible example of the types of capital costs and required revenues to be financed under the proposed project can be found under the State of California Department of Water Resources Central Valley Project Water System Revenue Bonds Series AS—Preliminary Official Statement Dated September 19, 2014—for \$652 Million. (See Appendix I Capital Expenditures for Water System Projects, listed as of September 4, 2014.)⁵ Starting at page I-6 is a list of “Water System Projects” that have not been completed, but could be funded by the issuance of such debt including the “*Delta Facilities Program*” which includes dredging, channel improvements, flow control etc. Any such facility anticipated to be funded by the Contract Extension changes would need to comply with permit conditions pursuant to the United States Army Corps of Engineers compliance with Section 404 of the Clean Water Act which prohibits discharge if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem.

The proposed projects and associated costs to be funded by the Contract Extension also likely will impact the General Fund expenditures and Legislative decision making and planning. Without an accurate project description these impacts will remain unknown. For example the California Legislative Analysis Office has noted, “*Existing statute provides DWR with the authority to spend SWP funds without legislative approval for these purposes. As an example, DWR is moving ahead with a \$350 million capital improvement project to make seismic safety retrofits to the dam at Lake Perris without legislative oversight—even though a portion of costs will be allocated to Davis-Dolwig and could be viewed as an obligation of the state. The SWP contractors have raised concerned with the portion of costs that they will be required to*

⁵ Ibid. Appendix I see pages I-1 to I-8.

pay for Lake Perris, as they feel that there is limited water supply benefit and a more cost-effective alternative to the capital improvement project exists.”⁶

The Contract Extension also proposes a mechanism for financing capital projects with SWP Project funds and recovering those costs with interest from the SWP Contractors along with establishing an account to pay for certain SWP expenses not chargeable to the SWP Contractors. What future projects and associated impacts are anticipated from this change? How will these proposed increased revenues and debt with interest, especially under paper water entitlement provisions, impact local land use decision making, schools, libraries, prisons or other essential services?

2. The “No Project” Alternative Needs to be Clearly Defined and Evaluated.

Equally critical to assessing the impacts from the proposed Contract Extension is the definition of the “No Project Alternative.” In addition to an accurate “scope of work” to be funded by the proposed project, a clear description of the existing project is required. This “no project” description must describe under the current SWP Contracts the amount of principal paid, amount owed and why the current or existing SWP project facilities will need additional revenues past the pay off date under the existing contracts. Ratepayers and taxpayers agreed to contract terms some 75 years ago that anticipated the project would be paid in full at the end of the term. What are the amounts of the original remaining capital costs under the existing contracts? What are the anticipated revenue needs for maintaining the existing capital system? How much would each of the 29 contractors be required to pay in annual expenses to maintain the existing system? Under the existing costs and revenues, why is another 50 years of debt required? The current contract provisions authorizing DWR to charge the SWP Contractors annually for the full amount of the required annual debt service and coverage on the bonds will continue in any extended contract. This baseline of existing capital costs, revenues and expenditures needs to be clearly provided and is essential for each contractor and the State of California to understand and weigh the impacts of the proposed project.

Under existing contract provisions the Bay Delta Conservation Plan—Delta Habitat Conservation and Conveyance Program (BDCP-DHCCP) planning activities have been funded through activity agreements and operation and maintenance charges under the existing SWP Contracts. These costs have more than doubled since commencing in 2009. They are expected to more than double again sometime in 2014 or 2015.⁷

3. The Full Range of Alternatives Needs to be Identified, Defined, and Evaluated

Any environmental analysis of the proposed Contract Extension needs to look at the impacts of a full range of alternatives. At a minimum, once the baseline remaining capital costs are known and a realistic list of operation and maintenance projects provided, then the revenues needed to maintain the existing SWP project system can be assessed and the

⁶ http://www.lao.ca.gov/analysis_2009/resources/res_anl09004003.aspx

⁷ http://www.mercurynews.com/ci_24795356/delta-tunnels-plans-true-price-tag-much-67 Delta tunnels plan's true price tag: As much as \$67 billion by Paul Rogers San Jose Mercury News December 2013.

alternatives can reasonably be defined and considered, including a shorter refinancing period. Also many smaller districts appear to have been threatened with the loss of their current water supplies and capital investment if they do not agree to the proposed contract extensions. If true, an alternative to this type of extortion is needed.⁸ At the present time, pending SWP capital projects are estimated to require expenditures of at least \$1.5 billion. The proposed extension will lengthen the term of the contract potential by some 50 years, and allow these capital expenditures to be financed over an extended financing period. The City of Santa Maria contends, *"If the contract expires and the (Santa Barbara) County fails to extend the contract beyond 2035, County water purveyors will no longer have rights to State Water, thereby rendering useless a capital project that has already been paid for. Some have characterized this as paying off your house before burning it to the ground."* If the City of Santa Maria's analysis is correct—DWR has threatened that failure to approve this contract extension will result in the loss of 'rights to State Water' that one has paid for pursuant to the current contract and paid in full—then the EIR needs to fully evaluate alternative financing, debt, and contract extension provisions so that existing capital investments are protected without a threat to the loss of water or access to SWP water if one chooses to operate under the existing contract provisions and payout provisions. This could include pay-as-you go or alternative debt issuance by individual contractors so any ongoing identified operation and maintenance costs are paid, and yet, entities are not obligated to expensive additions that likely will produce little or no water supplies.

Previous contract amendments adopted under the December 1994 Monterey Amendment have twice been challenged in court and the courts have held the environmental reviews insufficient. DWR has agreed under a settlement agreement from the first lawsuit to pay for certain watershed improvements in Plumas County. These costs and expenditures need to be considered in the full range of alternatives and as part of the definition of the current project costs and contract obligations and under any project contract extension. Additionally, on March 5, 2014 and October 2, 2014, the Sacramento Superior Court ruled the EIR for the transfer of the SWP's Kern Water Bank was not sufficient and the environmental impacts of the transfer were not analyzed.⁹ In the October 2, 2014 ruling, the court stated:

"DWR's environmental review should include the transfer, development, and operation of the Kern Water Bank. The terms of the Settlement Agreement require the EIR to include such analysis." P.7 of 15 of Opinion issued on Oct. 2nd.¹⁰

A full range of alternatives under the Contract Extension should consider both the financial and resulting physical impacts of divesting this public asset to control by a private company.

4. The impacts to SWP contractors who choose not to sign the proposed contract extension must be clearly explained, defined and justified in terms of Table A allocations, conveyance capacity and the ability to transfer water supplies. Scare

⁸ http://www.cityofsantamaria.org/staffrep/Archive/2013/Oct_01/3H.pdf

⁹ <http://calsport.org/news/court-strikes-down-environmental-review-of-kern-water-bank/>

¹⁰ http://www.c-win.org/webfm_send/451

tactics are currently being used to coerce SWP contractors into supporting the contract extension and the Bay-Delta Conservation Plan (BDCP).

Will SWP contractors lose their Table A Allocation if they don't sign the contract extension? Why?

Will SWP contractors lose their capacity in SWP conveyance facilities if they don't sign the contract extension? Why?

Will SWP contractors lose their ability to transfer purchased water in the SWP conveyance facilities if they don't sign the contract extensions? Why?

5. The Contract Extension and Negotiated AIP Appears to Piece-Meal Multiple Poorly Defined Projects, Apparently Attempting to Avoid the Legally Required Assessment Of Cumulative Impacts.

Under the California Environmental Quality Act (CEQA), cumulative impacts of all aspects of the project must be identified and “piece-mealing” a project is prohibited. Although the Contract Extension and negotiated AIP states the BDCP and DHCCP participation decision will not be part of the SWP contract amendment—a separate public negotiation and environmental review process to develop appropriate SWP water supply contract amendments for the BDCP and DHCCP is already scheduled for December 2014.¹¹ As mentioned above, under existing SWP contract provisions, planning for the water tunnels anticipated under the BDCP and DHCCP are presently funded.¹²

It would be illogical for the proposed 50 year Contract Extension to evaluate the direct impacts of this extended term of debt, and the resulting list of SWP projects that would result or are needed to be funded with the issuance of the debt, and yet completely ignore the impacts of the pending 50 year permit being sought under the BDCP/DHCCP project. Simply put, the Contract Extension enabled under the negotiated AIP is essential for issuing the debt to fund the BDCP-DHCCP—thus they are inexorably linked. The SWP Contractors clearly

¹¹ http://www.water.ca.gov/swpao/watercontractextension/docs/00202-AIP_Concerning_Extension_of_SWP_Water_Supply_Contracts_Execution_Version_6-18-2014.pdf pg 12.

¹² http://awpw.assembly.ca.gov/sites/awpw.assembly.ca.gov/files/hearings/First%2BAmendment%2BMOA%2BSept%20%2B2011_ocr.pdf and see the April 11, 2013 MOA Agreement for the Funding Between the Department of Water Resources and the San Luis Delta Mendota Water Authority for the Costs of Environmental Analysis, Planning and Design of the Delta Conservation Measures, including Delta Conveyance Options.

<http://www.kysq.org/docs/MWD.%20BDCP.Cost.Analysis.Sep2010.pdf>

The DHCCP Funding Agreement establishes uniform terms between participating SWP contractors and DWR to fund their collective half of DHCCP costs. The DHCCP Funding Agreement provides program costs to be included in each participating SWP contractors' annual Statement of Charges. Table 1 captures the BDCP and DHCCP program budgets and identifies Metropolitan's share that would be applied to its annual SWP Statement of Charges. Metropolitan's share of these planning costs is incorporated into its annual budget for SWP supplies. 9/14/2010 Board Meeting pgs 1-2.

understand this necessary link. For example a Kern County Water Agency staff memo in September 2013, noted, “DWR and SWP Contractors need to come to agreement on a contract extension that matches the term of the BDCP and provides the SWP Contractors with a more appropriate role in managing SWP expenses.”¹³ And, in response to a State Water Project Contractors Authority’s request for a proposal regarding financing the BDCP-DHCCP in March 2014, Morgan Stanley Investment Banker’s stated,

“Water Supply Contracts. We understand that DWR’s water supply contracts are in the process of being extended, likely to 2085, or 50 years from 2035 when most expire. Clearly, in order to finance the substantial costs associated with CM1 in the BDCP, the extension of these contracts is essential to allow for the amortization of financing payments over a long period of time.”¹⁴

To investment bankers, the contract extension is “essential” to the financing of the BDCP-DHCCP. Clearly, this is a “reasonably foreseeable probable future project” that in fact requires this fifty-year contract extension for the viability of financing. Despite the AIP suggestion that environmental review of the financing of the BDCP-DHCCP will occur in December 2014 in a separate environmental document, these two projects are intimately connected. The law requires that environmental reviews must be fully analyzed in a single environmental review document and not in a piecemeal manner, or segmented into two separate reviews. Chopping up the project in such a manner fails to analyze the entire project with consideration of its cumulative effects.

6. The impact on fish and wildlife from Objective 3(d) in the AIP whereby the SWP contractors would no longer be responsible for funding specified fish and wildlife and recreation requirements for the SWP. [This provision is designed to avoid the FERC licensing mitigation measures among others. They include recreation and FERC views them as mitigation and part of the project’s responsibilities.

The EIR should analyze alternatives to Objective 3(d) in the AIP (page 11) whereby the public, rather than SWP contractors would pay for specified fish, wildlife and public recreation. Public funding is limited for fish, wildlife and recreation, and often mitigation of SWP impacts is incorrectly identified as enhancement. The reduction of funding in Objective (3d) for fish, wildlife and recreation adversely affected by construction and operation of the SWP should be disclosed. Alternatives need to analyze with and clearly disclosed the impacts. To assist in weighing these impacts an alternative where the costs would be reimbursable by SWP contractors needs to be presented. The environmental impacts of reduced or eliminated payments for fish, wildlife and recreation should clearly be identified compared to existing conditions.

¹³ Kern County Water Agency memo dated September 23, 2013 “Resolution of Issues Necessary to Inform a Development of a Business Case to Support a Decision on Continued Funding for the Bay Delta Conservation Plan and the Delta Habitat Conservation and Conveyance Program. Page 1.

¹⁴ See Morgan Stanley: State Water Project Contractors Authority: Response to Request for Qualifications and Proposals for Underwriting Services March 19, 2014 pg 8.

Coalition Scoping Comments on Water Supply Contract Extension

Conclusion

Evaluation of the proposed Contract Extension and negotiated AIP project needs to clearly address the four concerns that we have outlined and answer the following questions:

1. How much is still owed in capital costs for the existing SWP?
2. How much revenue is required and what is the basis for the determination?
3. Have the needed revenue projections taken into account the lack of water sales due to climate change and droughts? If not, the source or sources of water that will supplement a dwindling supply must be fully disclosed and impacts evaluated.
4. What is the list of projects that make up the need for the additional revenues under the contract extension of some 50 years?
5. What is the proposed 50 year repayment contract term based upon?
6. Over the 50 year contract extension term how much of the revenue is projected to come from property taxes?
7. If the projection of capital costs and revenue needs does not include the proposed BDCP-DHCCP water tunnels, then why doesn't the proposed contract clearly state no revenues generated by the extension will be used for the BDCP-DHCCP project?

Thank you for the opportunity to comment.

Sincerely,



Carolee Krieger
Board President and Executive Director
California Water Impact Network
Caroleekrieger7@gmail.com



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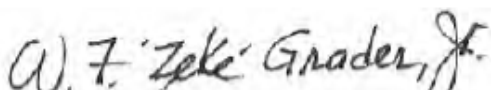
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Coalition Scoping Comments on Water Supply Contract Extension



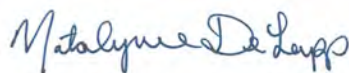
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Coalition Scoping Comments on Water Supply Contract Extension

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October 13, 2014

Via Email to ted.alvarez@water.ca.gov
and U.S. First Class Mail to:

Attn: Ted Alvarez
State Water Project Analysis Office
Dept. of Water Resources
1416 Ninth Street, Room 1620
Sacramento, CA 95814

Re: Comments on the Notice of Preparation of an EIR for the "Water Supply Contract Extension Project."

Dear Mr. Alvarez:

Please see the attached comments submitted on behalf of the Central Delta Water Agency on the above-referenced matter.

Thank you for considering these comments and concerns.

Very truly yours,

Dante John Nomellini, Jr.
Attorney for the CDWA

Enclosure

Attachment to
Central Delta Water Agency's Comments on the Notice of Preparation
of an EIR for the "Water Supply Contract Extension Project."

10/13/14

Our public scoping comments are organized into the following categories to address issues related to: contract duration, water supply contract amounts, relationship of the SWP contract renewals to the CVP/SWP Coordinated Operating Agreement (COA), federal nexus with the contract renewal project and need for federal agency involvement in the environmental review and subsequent permitting of the project, water-rights related issues, Notice of Preparation procedural errors, impact topics for the EIR to address, and funding issues.

Contract Duration:

1. **The proposed 70 year duration is extreme and incorporates too much future uncertainty.**
Climate change was not anticipated in 1960s original contract development, but consideration of climate change is now a requirement of CEQA and NEPA and DWR has adopted protocols and standards for consideration of climate change for all of their projects. Sea level rise was also not anticipated in 1960s original contract development, but consideration is now a requirement of CEQA and NEPA and DWR has adopted protocols and standards for consideration of sea level rise for all of their projects. Subsidence of canals was anticipated in the original engineering of the SWP, but subsidence-caused loss of conveyance capacity over time and its affect on water supply deliveries was not accounted for in the original SWP water supply contracts, see "Contract Delivery Amounts, comment 10" below. Potential loss of conveyance capacity and system reliability from invasive mussel (e.g. quaga and zebra) colonization of the SWP pumps and canals was also not anticipated or included in the original SWP water supply contracts. There have been profound changes to demographics, industry water use, water demand, ground water depletions, water transfers and water market economics, crop types grown, crop production practices, geographic distribution of crop types grown and population geographic distribution changes that were not anticipated in the original SWP water supply contracts. State Water Project Bulletin 132-06, pg 4, "Some changes have occurred since the long-term water contracts were signed in the 1960s. These changes include population growth variations, differences in local use, local water conservation programs, and conjunctive-use programs." There are potential projects currently under consideration that would fundamentally alter the SWP infrastructure, e.g. BDCP and Sites Reservoir, which may or may not occur. Each of these above factors must be addressed in the SWP water supply contract renewal and each represent a significant amount of uncertainty in the magnitude of water supply impact. A shorter duration contract period, e.g. 30 years, must be evaluated so that the conditions under the contract period are more certain and predictable.
2. **The original contract period of 75 years was to provide a long duration of repayment on the original SWP construction cost.** The original SWP construction cost is scheduled to be repaid by the end of the original contract duration in 2035. Only smaller subsequent projects that extended the SWP after the original construction should be financed by bonds occurring later than 2035. Since the relative costs of these later SWP bond funded projects are much smaller

than the original SWP construction cost, the extreme 75 year duration of contract period is not warranted. The smaller subsequent SWP expansion costs can be funded by bonds of shorter duration, so a 30 year contract period (or shorter) also must be evaluated.

Contract Delivery Quantities:

- 1. The SWP water supply delivery contract amounts must address how much water is spilled/leaked/evaporated in the SWP system.** The current SWP water supply delivery contract amounts do not address how much water is spilled/leaked/evaporated in the SWP system from the point of diversion to the point of water delivery in the SWP service area. "The July 1997 Journal American Water Works Association cites examples of more than 45 percent leakage." "DWR estimates that up to 700,000 acre-feet of leakage occurs in California each year from nonvisible leaks." (<http://www.water.ca.gov/wateruseefficiency/leak/>) Estimates range from 25-50% of the water diverted by the SWP is spilled, leaked and evaporated prior to delivery to service areas. This SWP rate of water loss results in unnecessary environmental impacts from increased quantities of water diversions and other impacts. This current SWP system loss also represents perhaps the largest single water conservation opportunity that exists in the state of California at this time. The structure of how the SWP water supply contracts are renewed must be changed so that the economic opportunities of reducing SWP water system losses are shared with the water contractors and service areas. The EIR must include alternatives which allocate SWP system water losses to the Service Area Contractors proportionate to the amount of water losses associated with their water delivery. As an example, service areas near the SWP water diversions would only share a small portion of the losses that occur from the point of diversion to the point of delivery while service areas at the farthest reaches of the SWP system would share proportionately more in the system losses in their water delivery contract amounts. With the current water contract structure and given the reported rates of SWP conveyance losses above, the environmental impacts from the SWP south delta water diversions for Southern California water contractors is as much as 45% higher per Acre Foot than for water contractors that take delivery near Tracy. In order to compensate for the disproportionate impacts per acre foot of water delivered between the near system and far system SWP water contractors, the water contract amounts must be for the quantity of water diverted by the SWP on behalf of the water contractor, not based on the quantity of water that is actually delivered. By making the water contract based on the amount diverted for each water contractor and on not the amount delivered, there will be motivation for the contractors and SWP to more aggressively address water losses that occur in the SWP. This is similar in concept to the project where Metropolitan Water District of Southern California (MWD) paid for system improvements to reduce water conveyances losses for Imperial Irrigation District and in return, MWD got an equivalent amount of water supply transferred to them for the water that was saved from loss in the IID conveyance system. If the water contractors pay to improve parts

of the SWP system and reduce their proportionate losses, then their effective amount of water supply goes up. This mechanism for water conservation and for equalizing the environmental impacts per acre foot of water delivered for the various water contractors is completely missing from the current water supply contracts and must be included in the EIR alternatives.

2. **Surplus water is not to become permanent demand.** Surplus water that has been delivered to water contractors from interrupted service or other causes must not be allowed to be incorporated into the contract renewal water supply contract delivery amount. Surplus water deliveries are growth inducing and this option must be dropped in the water supply contract renewals or the environmental impacts of this growth inducement must be evaluated, disclosed, and mitigated.
3. **The current contract allows use of excess capacity.** The use of excess capacity is growth inducing and encourages water transfers/sales arbitrage from northern to southern California. Excess capacity usage is growth inducing and this option must be dropped in the water supply contract renewals or the environmental impacts of this growth inducement and other environmental and beneficial use-related impacts must be evaluated, disclosed, and mitigated. Water transfer requirements allow "temporary transfers" of one year of duration or less to be exempt from CEQA. (Bulletin 160-93, The California Water Plan Update, October 1994) The SWP contract renewals must address the repeated use of one year transfers to side-step the CEQA requirements which circumvent the environmental review of impacts that occur from these repeated water transfers. The SWP contract renewal EIR must stipulate that any water transfer that is repeated for more than one year must undergo CEQA review, otherwise the SWP is precipitating impacts which have not been analyzed or disclosed and is in violation of CEQA.
4. **The original water supply contract provides no guarantee of water amounts in subsequent water supply contract renewals.** The DWR Proposed Project sets forth deliveries at the same as the existing contract amounts. Delivery amounts in the original and amended contracts were not guaranteed to be renewed in succeeding contracts. Because water supply amounts were not guaranteed in subsequent SWP contract renewals, the EIR must include alternatives that do not have the same water supply delivery amounts in the water supply contract renewals.
5. **DWR has failed to construct a SWP that ever was capable of meeting the current water supply contract amounts.** MWD Contract Amendment 1/1/2005, Article 1n "This recognition that full Annual Table A amounts will not be deliverable under all conditions does not change the obligations of the State under this contract, including but not limited to, the obligations to make all reasonable efforts to complete the project facilities, to perfect and protect water rights, and to allocate among contractors the supply available in any year, as set forth in Articles 6(b), 6(c), 16(b) and 18, in the manner and subject to the terms and conditions of those articles and this contract." MWD Contract Amendment 1/1/2005, Article 6c "State shall make all reasonable efforts consistent with sound fiscal policies, reasonable construction schedules, and proper operating procedures to complete the project facilities necessary for delivery of project water to the District in such manner and at such times that said delivery can commence in or before the

year specified in subdivision (a) of this article, and continue in the amounts designated in Table A.” MWD Contract Amendment Article 16b – “The State shall make all reasonable efforts to perfect and protect water rights necessary for the System and for the satisfaction of water supply commitments under this contract.” The reasonable efforts of the State have not resulted in the satisfaction of water supply as the SWP chronically under-delivers the current contract amounts. It is therefore “reasonable” that the delivery amounts committed to in the contract renewal should be an amount that the project can reasonably and consistently deliver. The SWP water supply contract renewal Table A amounts must be revised down to levels that the currently constructed SWP system is capable of delivering so DWR is not consistently in violation of the terms of the agreement as it is under the current contracts as it is identified above.

6. **The SWP was never built out as originally authorized, so the original contract water supply delivery amounts cannot be supported.** The SWP plan was by the year 2000 to have developed projects in the North Coast sufficient to supplement flows into the Delta by 5 million acre feet annually. These projects were not constructed. As a result, SWP capacity falls short by an annual amount of at least 5 million acre feet thereby providing no firm yield and less than an adequate supply to meet water supply and water quality obligations in the Delta and other areas of origin. The future system capacity conditions under which the original water supply delivery contract entitlements were set were never fulfilled and this is why the SWP chronically under-delivers on its current water supply deliveries under the current contracts. The EIR must include alternatives that consider water supply delivery amounts less than the current contracts and be based on amounts the current and reasonably foreseeable future system can actually deliver.
7. **SWP Water Supply Contract “over-promising and under-delivering” causes groundwater over-drafting and subsidence.** “...drought conditions during 1976–77 and 1987–92, and drought conditions and regulatory reductions in surface-water deliveries during 2007–10, decreased surface-water availability, causing pumping to increase, water levels to decline, and renewed compaction. Land subsidence from this compaction has reduced freeboard and flow capacity of the Delta-Mendota Canal, the California Aqueduct, and other canals that deliver irrigation water and transport floodwater.” (Pg 1, “Land Subsidence along the Delta-Mendota Canal in the Northern Part of the San Joaquin Valley, California, 2003–10”, Michelle Sneed, Justin Brandt, and Mike Solt; Scientific Investigations Report 2013–5142.) Agricultural water users develop their water use demand based on more or less average annual water deliveries. In some years the level of water demand and the level of water delivery are not seriously divergent and in conflict and therefore reliance upon groundwater as an alternative water supply is not substantial. In drought years with significantly curtailed SWP water deliveries (like 2014 as an example), farmers are forced to make up SWP water delivery shortfalls with groundwater resources. This all too frequent practice has resulted in an increase in the rate of groundwater resource depletion and subsidence rather than a reduction in groundwater depletion and subsidence which the SWP implementation was supposed to accomplish. The only way the SWP

can avoid this impact from building up a water supply demand (over-promising) that it rarely fulfills (under-delivering) and the resulting groundwater over-draft-related impacts is for DWR to renew the SWP water supply delivery contracts for a substantially reduced amount of water such that the amount of water delivered in a drought year does not result in a groundwater withdrawal that exceeds the effective and sustainable groundwater recharge rate. Any greater water supply delivery promises by the SWP than what would exceed this balanced groundwater alternative water supply demand are inherently unsustainable and will result in significant groundwater and irreversible subsidence-related impacts. This balanced sustainable groundwater alternative water supply SWP delivery quantity must be included as an alternative in the EIR. This “sustainable groundwater alternative” SWP water delivery amount can be calculated for each SWP service area groundwater basin using the following generalized methodology. First, determine the current size (TAF) and annual groundwater recharge for each groundwater basin for the 82 year period of hydrologic record. Second, determine the safe and sustainable annual quantity of groundwater yield (including maximum rate of groundwater withdrawal without collapsing water bearing strata) in each basin. Now add the groundwater basin (with size, recharge rates and maximum sustainable rates of withdrawals) as a “reservoir” for each groundwater basin and SWP service area to CALSIM (or in a post processing module for analyzing CALSIM results). Next, using the 82 year period of record and the CALSIM model, optimize the amount of SWP water deliveries for each groundwater basin/SWP service area. Determine the amount of SWP water delivery that does not accrue into an over-draft of the groundwater basin at any time during the 82 year period of record. The maximum SWP delivery amount that does not result in over-drafting the groundwater in any year in the 82 year hydrologic period of record will be the maximum contract delivery amount for that groundwater basin and SWP service area for use in the “sustainable groundwater” EIR alternative.

8. **Water contract renewal supply amount alternatives must address the over-subscription of surface water supplies.** The EIR alternatives must include an amount of water delivery that reflects the current 5 time oversubscription of mean annual runoff and oversubscription of surface water supplies by 1000% of California’s major river basins (“100 years of California’s water rights system: patterns, trends and uncertainty”, Theodore E Grantham and Joshua H Viers 2014 *Environ. Res. Lett.* 9 084012). DWR is a junior water rights holder and should not perpetuate the oversubscription of surface water rights. Based on this level of surface water right over-subscription and DWR’s junior water rights, the EIR alternative must consider a contract amount that cuts back water supply deliveries to 10% or less of the current DWR water right to reflect the proportional amount of surface water supply that actually exist.
9. **The Water contract renewal supply amounts must not exceed what the SWP can “dependably” deliver.** MWD Contract Amendment 1/1/2005, Article 58 – “Determination of Dependable Annual Supply of Project Water to be Made Available by Existing Project Facilities” “This report will set forth, under a range of hydrologic conditions, estimates of overall delivery capability of the existing project facilities and of supply availability to each contractor in

accordance with other provisions of the contractors' contracts. The range of hydrologic conditions shall include the delivery capability in the driest year of record, the average over the historic extended dry cycle and the average over the long-term. The biennial report will also include, for each of the ten years immediately preceding the report, the total amount of project water delivered to all contractors and the amount of project water delivered to each contractor." Dictionary.com defines "dependable" as, "capable of being depended on; worthy of trust; reliable" and defines "reliable" as "able to be trusted; predictable or dependable" SWP water supply delivery quantities have not been predictable or reliable, are not depended or relied upon because the amount of SWP water deliveries chronically fall far short of the current contract amounts and therefore alternative water supplies must be regularly relied upon to compensate for the SWP delivery shortfalls. DWR must include alternatives in the EIR based on these reports for water delivery quantities that were determined to be "dependable". Methods to calculate the water delivery amounts that are dependable should include the bottom quartile of last 10 years of deliveries or 75% probability of exceedance whichever is less (which would be more conservative from a standpoint of water supply dependability). Another method to identify this "dependable" water supply delivery amount is to look at the operational record of the SWP and identify the lowest water delivery which occurred since the start of SWP operations. This SWP historical water delivery operational record for dependable water supply delivery amount must be adjusted to reflect the current OCAP BO, D1641 and Wanger Remand operating criteria. The SWP has not demonstrated that it can dependably deliver even that lowest amount of water, so lower amounts and even no deliveries except in above normal and wet years must also be included as project contract delivery alternatives.

10. The SWP conveyance capacity has changed since the original water supply contract.

Subsidence from groundwater overdraft (caused by SWP under-deliveries, see Contract Delivery Quantities, comment 1) has reduced the conveyance capacity of large portions of the SWP canal system. "The overall length of the Central Valley portion of the canal is 280 miles (450 km) with 200 miles (320 km) in areas of significant subsidence." "LAND SUBSIDENCE AND THE CALIFORNIA STATE WATER PROJECT" Clifford V. Lucas and Laurence B. James, California Department of Water Resources, Sacramento, California, Publication n°121 of the International Association of Hydrological Sciences Proceedings of the Anaheim Symposium, December 1976. If subsidence continues at its current pace (it is reasonable to assume it will as a continuation of current policies and practices), large sections of the aqueduct will no longer be viable (based on engineering, maintenance, and economics) to be raised to compensate for subsidence. The proposed contract duration and proposed water delivery quantities must take into account the current reduced capacities as compared to the original capacities and contracted water delivery quantities as well as incorporate reductions in future water delivery quantities that match with future reductions in water delivery capacity from further future subsidence impairment of the conveyance capacities.

11. **The Bay Delta Conservation Plan would alter SWP operations and water contract delivery capacities.** The SWP water supply contract renewal EIR must include alternatives for each of the water supply delivery amounts that would result from the implementation of any of the current BDCP alternatives. If this EIR does not include those alternative delivery amounts that would result from the implementation of the BDCP, the environmental impacts of the contract renewals will not be disclosed and would be piece-mealed which is in violation of both NEPA and CEQA legal requirements.
12. **Restoration of Original Standard Contract Provisions.** Restoration of the standard provisions and recovery of the Kern Water Bank should be considered as a separate alternative. Contractors should not be allowed to take Article 21 water unless they have first utilized (not transferred) Table A entitlements. Article 21 water should not be allowed to support permanent demand. Water contractors should not be allowed to profit from sale, transfer, lease or in any other manner from project water.

SWP/CVP Coordinated Operating Agreement (COA):

Coordinated CVP/SWP operations, funding and water deliveries are based on the COA. The COA is grossly out of date and has not been updated since 1986. Since funding and water supply deliveries are dependent upon the COA and water supply and funding are part of the SWP water supply contract renewals, the COA must be updated as part of the scope of the SWP water supply contract renewals project. If the COA is updated independently of this project, then the SWP Contracts would have to be amended and an environmental impact of those changes in water deliveries and operations evaluated. If this EIR does not include the COA update and the resulting adjustments made to SWP delivery amounts the contract renewal impacts will not be fully disclosed and this would result in piece-mealing the environmental impacts of the contract renewals which is in violation of both NEPA and CEQA legal requirements.

Federal Nexus of the SWP Contract Renewals:

There are several federal nexus' for the SWP contract renewal including coordinated SWP water delivery operations with the CVP, joint facilities with the CVP, operational interties and water supply exchanges, and funding through bonds issued under the Central Valley Project Act (CVPA). These federal nexus with the SWP water contract renewal all provide sufficient cause for the environmental review to comply with federal Environmental Impact Statement requirements. The project environmental document must therefore also include an EIS and appropriate federal lead agencies.

1. The COA provides a federal nexus for the SWP water supply contract renewal as any SWP changes in water deliveries will affect CVP operations and water deliveries and visa versa. Because the SWP contract renewal impacts the CVP operations and water deliveries and visa versa, Reclamation must be a lead federal agency on the EIS component of the SWP contract renewal environmental review. The proposed changes to the SWP contracts will likely require a change in the COA necessitating federal action.
2. Changes in SWP water supply deliveries and on-going impacts of continuing current water deliveries have impacts on federal listed species, so USFWS and NMFS should also be federal lead agencies for the EIS.

3. San Luis Reservoir is a joint SWP/CVP facility and is an integral facility of the SWP water contract deliveries. Any changes in SWP operations or deliveries would affect San Luis Reservoir operations, costs, available storage capacity and environmental impacts. Reciprocally, any changes in CVP operations relative to San Luis Reservoir also affect the SWP water deliveries and costs.
4. SWP and CVP current and planned reasonably foreseeable interties and their affects on operations and water supplies also establish a federal nexus for the SWP contract renewal.
5. Some of the water bonds for facilities used in SWP water deliveries were issued under the CVPA. See MWD Contract Amendment 1/1/2005, Article 28e. This SWP funding through a federal project also creates a federal nexus that triggers the requirement for an EIS component to the SWP contract renewal environmental review.
6. The Agreement In Principle (AIP) Concerning Extension of SWP Water Supply Contracts, is DWR's Proposed Project for the SWP water contract renewal. AIP article XIV, dated June 18, 2014 says that, "...Contractor participation in the BDCP and DHCCP will be addressed through a separate public negotiation and environmental review process to develop appropriate SWP water supply contract amendments." (Emphasis added) The BDCP is a joint federal and state project, so this joint federal and state negotiation with SWP water contractors for the SWP water contract renewals is a clear federal nexus for the SWP contract renewal project. The AIP proposed method of addressing these negotiations as an amendment to the SWP water contracts is clearly an attempt to piece-meal the environmental impacts of the water contract renewal. Piece-mealing of environmental impacts by proposing to do a contract amendment concurrently with the contract renewal is against CEQA and NEPA regulations.

SWP Water Rights:

DWR water rights are subordinate to senior rights and conditioned on compliance with statutory requirements as well as permit conditions. The SWP, as a junior water rights holder is not allowed to impair the water quality or quantity of the senior water rights holders from the operational impacts of their diversions.

"Area of Origin Statutes during the years when California's two largest water projects, the Central Valley Project and State Water Project, were being developed, area of origin legislation was enacted to protect local Northern California supplies from being depleted as a result of the projects. County of origin statutes provide for the reservation of water supplies for counties in which the water originates when, in the judgment of the State Water Resources Control Board, an application for the assignment or release from priority of State water right filings will deprive the county of water necessary for its present and future development. Watershed protection statutes are provisions which require that the construction and operation of elements of the Federal Central Valley Project and the State Water Project not deprive the watershed, or area where water originates, or immediately adjacent areas which can be conveniently supplied with water, of the prior right to water reasonably required to supply the present or future beneficial needs of the watershed area or any of its inhabitants or property owners.

The Delta Protection Act of 1959 declares that the maintenance of an adequate water supply in the Delta--to maintain and expand agriculture, industry, urban, and recreational development in the Delta area and provide a common source of fresh water for export to areas of water deficiency--is necessary

for the peace, health, safety, and welfare of the people of the State, subject to the County of Origin and Watershed Protection laws. The act requires the State Water Project and the federal CVP to provide an adequate water supply for water users in the Delta through salinity control or through substitute supplies in lieu of salinity control.

In 1984, additional area of origin protections were enacted covering the Sacramento, Mokelumne, Calaveras, and San Joaquin rivers; the combined Truckee, Carson, and Walker rivers; and Mono Lake. The protections prohibit the export of ground water from the combined Sacramento River and Sacramento-San Joaquin Delta basins, unless the export is in compliance with local ground water plans. Also, Water Code Section 1245 holds municipalities liable for economic damages resulting from their diversion of water from a watershed.” (<http://www.waterplan.water.ca.gov/previous/b160-93/b160-93v1/ifrmwk.cfm>)

DWR is not compliant with their junior water rights requirements as the SWP operations frequently impair Delta water quality and take non-surplus water from the Delta in violation of the Delta Protection Act of 1959 (among other laws and regulations). Transfers of water supplies through the SWP from conjunctive use of groundwater substitution for surface water supplies are not consistent with local groundwater plans. Water contractors supplied through the SWP are liable for any direct or indirect damages from diverting water from a watershed. These damages may include injury, damage, destruction or decrease in value of any such property, business, trade, profession or occupation resulting from or caused by the taking of any such lands or waters, or by the taking, diverting or transporting of water from such watershed. (Water Code 1245)

The SWP Water Supply Contract Renewal EIR must consider the water supply, water rights, water quality impairments and other water beneficial use impacts associated with the continuation of SWP diversions of south delta water. The conditions of waters in the delta including direction of flows, water quality and impacts to agriculture, drinking water supplies and fisheries resources are a direct consequence of the SWP south delta facilities water diversions.

Notice of Preparation (NOP) Procedural Errors:

There are several procedural, noticing, timing and availability issues with the NOP.

1. The original NOP link to the proposed project description was broken and unavailable in the original publication. DWR e-mailed out a revised NOP to a few selected recipients, but did not republish the corrected NOP in the newspapers. This means that general public was never given the opportunity to review the proposed project description and only the few members of the public that DWR selected were given the corrected link to the proposed project.
2. By not putting the proposed project description in the NOP and instead relying upon a (broken) link to a website, DWR denied access to review the proposed project description to any member of the public that does not have ready access to a computer. This biases the public participation process against the more disadvantaged public. This is a public participation and environmental justice issue that DWR must address by reissuing a complete NOP that includes the proposed project description.
3. DWR only provided two business days between the revised NOP e-mail and the public scoping meeting. This is an inadequate amount of time for the public (those few who received the corrected NOP e-mail) to review the proposed project prior to the public scoping meeting. Two business days is not adequate public notice to review a project and another more reasonably scheduled public scoping meeting must be held, e.g. one month from the date of revised

newspaper publishing of the NOP would be a reasonable amount of notice to the public to attend the scoping meeting.

4. Thirteen business days (excluding Columbus Day holiday) is an insufficient amount of time from the public scoping meeting to the close of public scoping comment period to complete the review of the proposed project and all the relevant related materials, e.g. current SWP contracts (27 + a hundred or so amendments), climate change and sea-level rise documents related to the SWP water contract deliveries, CVP/SWP Coordinated Operating Agreement, groundwater overdraft and subsidence, original SWP authorizations, SWP phase II plans that were never completed and their system capacity implications, and other projects which could affect the SWP contracts such as the BDCP and intertie projects, etc. The pertinent documents to review to provide informed public scoping comments total in the thousands of pages. The proposed project is for a 75 year duration, so surely the public should be given more than thirteen business days to make scoping comments. After DWR issues the revised NOP (per the preceding comments) and holds a new Public Scoping Meeting(s), DWR should allow at least one full month after the meetings for the development of public scoping comments.

Impact Analysis Topics:

The SWP contract renewal EIR must address the entire scope of impacts from on-going water deliveries, including, but not limited to: salt accumulation, soils productivity, groundwater quality degradation, groundwater saltwater intrusion, groundwater overdraft, groundwater recharge rates, changes in groundwater pumping costs and economic impacts, changes in direction or magnitude of groundwater hydraulic gradient, subsidence, subsidence impacts to infrastructure, discharge water quality, additional raw and discharge water treatment and economic impacts, surface and groundwater beneficial uses of water, surface water quality degradation, growth inducement from use of SWP excess capacity, terrestrial and aquatic species, creation of wetland habitat at locations of canal leaks and loss of this habitat when leaks are fixed, contribution to groundwater recharge from canal leaks, reservoir fisheries and fish populations upstream of terminal dams, reservoir drawdown impacts on warmwater fish reproductive success rates and population sustainability, impacts of carryover water storage drawdown on warmwater fisheries, and on-going degradation of fish population genetic integrity.

Significance Criteria:

The EIR must use a full range of significance criteria which are consistent with DWR's use in other similar environmental documents. These similar environmental documents which DWR should use the superset of significance criteria from include: South Delta Improvement Program, Monterey Accord, Oroville Relicensing, CALFED, and BDCP. To use anything less than the synthesis of the significance criteria from these recent and similar projects would be an inconsistent application of policy, procedure and science.

On-Going Impacts of the SWP Operations and Environmental Compliance:

The SWP contract renewal will result in the continuation of the water delivery operations of the SWP. SWP water delivery operations have current and on-going environmental impacts which must be identified, characterized, evaluated, quantified, mitigated and disclosed in the EIR, see "Impact Analysis Topics" comments above. Current and on-going impacts of the operations of the CVP/SWP are covered by the current FWS and NMFS OCAP Biological Opinions (BO) compliance for on-going impacts of the SWP. As part of the Environmental Setting of the EIR, the document must include an accounting of the SWP and DWR compliance with the Reasonable and Prudent Actions (RPAs) that are legal requirements of the current OCAP BOs. The BO RPAs have many deadlines for submittal of letters of intent and

communications, studies, reports, plans, pilot projects, facilities and operational implementations for and to FWS and NMFS. Most of these deadlines have already past and it is relevant to the renewal of SWP contracts to disclose the status of OCAP BO RPA compliance as this compliance is the basis for DWR being able to continue to operate the SWP without causing jeopardy for several ESA species. If DWR and the SWP are not compliant with the current OCAP BO RPAs, then the contracts must not be renewed for their current contract amounts until compliance has been achieved, because the current level of water operations requires the implementation of the BO RPAs in order to avoid a jeopardy impact call on endangered species from the SWP operations. Alternatively, substantially reduced contract delivery amounts in the SWP contract renewal could contribute considerably to compliance with the BO RPA intent as water operations impacts on endangered species would be significantly reduced. This reduced water delivery contract amount approach to BO compliance would require a new OCAP BO to be issued.

The SWP Over-Estimates Net Delta Outflows:

SWP operations and resulting water delivery amounts are often constrained by net delta outflow requirements. The Net Delta Outflow Index (NDOI) that the SWP and CVP are currently using is grossly over-reporting net delta outflow so water supply deliveries are currently higher than the current operating requirements of the SWP should result in. The EIR must include an evaluation of the accuracy of the Delta Net Outflow Index accuracy and an adjustment for the water supply delivery quantities that would result from correctly adhering to the operational constraints of the SWP from Delta Net Outflow Index requirements. "While the NDOI is, at best, an estimate of Delta outflow, there are stations that accurately measure actual Delta outflow. The United States Geological Survey (USGS) has established a series of stations in the Delta to measure flow and water quality parameters." "Four of the USGS gaging stations... accurately measure Net Delta Outflow (NDO)." (*"The Case of the Missing Delta Outflow"*, California Sportfishing Protection Alliance) DWR's own analysis of NDOI ("Dayflow") estimates vs. the new more accurate USGS gage measurements concludes that the "Dayflow under estimates flow during wet periods and over estimates flow during dry periods."

(http://www.water.ca.gov/dayflow/docs/2013_Comments.pdf) This DWR report means that during the majority of the SWP diversion season (spring through fall), DWR systematically over estimates NDOI and systematically diverts more water than regulatory operational constraints would allow if NDO was correctly accounted for. This regular exceedance of regulatory constraints on the SWP operations must be evaluated in the SWP contract renewal EIR and contract water supply delivery amount alternatives must include amounts that would not result in the SWP violation of these operational requirements.

The Bay Delta Conservation Plan (BDCP) is not "reasonably foreseeable":

The BDCP has not even completed the public draft and is not approved or funded, so the BDCP does not meet the test of being reasonably foreseeable and cannot be included in the Existing Condition, the No Project or cumulative alternatives in the EIR.

Project Funding:

In addition to the proposed project, "pay as you go" after 2035, the SWP Contract Renewal EIR must also evaluate continuation of the existing funding methodology. None of the funding from this project or bonds issued related to it should be used to fund any water system improvements or conservation efforts in any way related to the BDCP project and efforts.



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STANISLAUS COUNTY ENVIRONMENTAL REVIEW COMMITTEE

October 8, 2014

Ted Alvarez
California Department of Water Resources
State Water Project Analysis Office
1416 Ninth Street, Room 1620
Sacramento, CA 95814

**SUBJECT: ENVIRONMENTAL REFERRAL – CALIFORNIA DEPARTMENT OF
WATER RESOURCES – WATER SUPPLY CONTRACT EXTENSION
PROJECT – NOTICE OF PREPARATION OF ENVIRONMENTAL
IMPACT REPORT**

Mr. Alvarez:

Thank you for the opportunity to review the Notice of Preparation for the above-referenced project.

The Stanislaus County Environmental Review Committee (ERC) has reviewed the subject project and has no comments at this time.

The ERC appreciates the opportunity to comment on this project.

Sincerely,

Tera Chumley, Senior Management Consultant
Environmental Review Committee

TC:ss

cc: ERC Members



October 13, 2014

Ted Alvarez
State Water Project Analysis Office
Department of Water Resources
1416 Ninth Street, Room 1620
Sacramento, CA 95814
ted.alvarez@water.ca.gov

VIA EMAIL AND U.S. MAIL

Subject: Scoping Comments on EIR for Water Supply Contract Extension and Negotiated Agreement in Principle (AIP) Project (Contract Extension).¹

Dear Mr. Alvarez:

On behalf of the Natural Resources Defense Council ("NRDC"), which has over one million members and activists, over 250,000 of whom reside in California, we are writing to submit scoping comments on the EIR for DWR's Water Supply Contract Extension and Negotiated Agreement in Principle (AIP) Project. Both the proposed project description and the Agreement in Principle ("AIP") are too narrow to satisfy the requirements of CEQA and DWR's obligations under state law. The proposal to extend State Water Project contracts for an additional 50 years necessarily implicates the urgent need to modernize State Water Project contract terms to reflect the current realities of climate change, restricted surface water supplies, declining water quality and environmental health of the Bay-Delta estuary, existing statutory requirements, and other current and anticipated changes that have occurred since these contracts were originally executed. We urge DWR to significantly broaden the scope of the project description and include alternatives that incorporate new and modified contract terms to reflect these realities.

Background

The NOP describes the proposed project to amend State Water Project water delivery contracts as follows:

The proposed project would add, delete and modify provisions of the Contracts based on the AIP. The proposed project would not create new water management measures, build new or modify existing facilities, or change water allocation provisions of the current Contracts. The proposed project would:

1

http://www.water.ca.gov/swpao/watercontractextension/docs/Notice_of_Preparation_of_an_Environmental_Impact_Report_for_Water_Supply_Contract_Extension_Project.pdf ("NOP").

- Extend the term of the 29 Water Supply Contracts to December 31, 2085.
- Provide for increased SWP financial operating reserves during the extended term of the Contracts.
- Provide additional funding mechanisms and accounts to address SWP needs and purposes.
- Develop a new “pay-as-you-go” methodology with a corresponding billing system that better matches the timing of future SWP revenues to future expenditures. “Pay-as-you-go” methodology generally means to recover costs within the year incurred and/or expended. The current billing methodology will be concurrently maintained through 2035 to ensure the full recovery of all past expenditures.

NOP at 3. In turn, the AIP,² or Agreement in Principle, with the participating contractors proposes a discrete set of concrete amendments and purports to exclude certain related issues from consideration in this process (e.g., the AIP states that “Contractor participation in the BDCP and DHCCP will be addressed through a separate public negotiation and environmental review process to develop appropriate SWP water supply contract amendments. DWR has begun the administrative process that will be used to facilitate the public negotiations of such amendments. The first public negotiation session is scheduled for December 2014.”) At the same time, the NOP acknowledges the broad obligation of DWR to operate the SWP to meet multiple obligations:

The SWP is a multi-purpose water storage and delivery system consisting of reservoirs, canals, aqueducts, power plants, and pumping plants, maintained and operated by DWR. One of its main purposes is to store and convey water to the Contractors. Over 25 million Californians and 750,000 acres of agricultural land utilize water from the SWP. On average, approximately 70 percent of SWP water is allocated to urban users and 30 percent to agricultural users in accordance with the Contracts. The SWP is also operated to improve water quality in the Sacramento-San Joaquin Delta, control flood waters, generate electricity, provide recreation, and enhance fish and wildlife.

NOP at 2.

I. The NOP and AIP Propose to Improperly Piecemeal Project Changes Associated With BDCP

CEQA defines a “project” as the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The entire project being proposed must be described in the EIR, and the project description must not be artificially truncated so as to minimize project impacts. *City of Santee v. County of San Diego* (1989) 214 Cal. App. 3d 1438, 1450. A project description must include all relevant aspects of a project, including reasonably foreseeable future activities that are part of the project. *Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376. Responsibility for a

² http://www.water.ca.gov/swpao/watercontractextension/docs/00202-AIP_Concerning_Extension_of_SWP_Water_Supply_Contracts_Execution_Version_6-18-2014.pdf

project cannot be avoided by limiting the title or description of the project. *Rural Land Owners Association v. Lodi City Council* (3d Dist. 1983) 143 Cal. App.3d 1013, 1025.

The proposed NOP and AIP fail to meet these requirements of CEQA because, among other things, they fail to analyze contract changes relating to the proposed Bay Delta Conservation Plan ("BDCP"). However, the SWP contractors have recognized that the proposals are inexorably interrelated. For example, in September, 2014, staff at the Metropolitan Water District of Southern California acknowledged that the proposed SWP contract amendments are a necessary step in BDCP financing.³ Similarly, Kern County Water Agency staff explained in September 2013 that "DWR and SWP Contractors need to come to agreement on a contract extension that matches the term of the BDCP and provides the SWP Contractors with a more appropriate role in managing SWP expenses."⁴ Furthermore, in response to a State Water Project Contractors Authority's request for proposal regarding financing the BDCP in March 2014, Morgan Stanley stated,

*"Water Supply Contracts. We understand that DWR's water supply contracts are in the process of being extended, likely to 2085, or 50 years from 2035 when most expire. Clearly, in order to finance the substantial costs associated with CM1 in the BDCP, the extension of these contracts is essential to allow for the amortization of financing payments over a long period of time."*⁵

The attempt by the AIP to separate the BDCP financing and related issues to some future analysis runs afoul of CEQA's requirements to define the project to encompass the whole of the action. It must be revised in the CEQA analysis. In addition, the DEIR must consider the applicability of Proposition 26 and 218 to the contracts, particularly with respect to any new infrastructure costs associated with the State Water Project.

II. The DEIR Must Consider One or More Alternatives to the AIP that Reduce Total Contract Amounts

Since the SWP contracts were last amended, an overwhelming number of studies, reports, and statutory provisions have recognized that DWR will be unable to deliver the approximately 4.2 MAF annually promised in SWP contracts. The contracts must be updated and revised to reflect that information and be consistent with law.

³ <http://edmsidm.mwdh2o.com/idmweb/cache/MWD%20EDMS/003735248-1.pdf>. This and other documents cited herein are incorporated by reference.

⁴ Kern County Water Agency, "Resolution of Issues Necessary to Inform a Development of a Business Case to Support a Decision on Continued Funding for the Bay Delta Conservation Plan and the Delta Habitat Conservation and Conveyance Program," at 1 (Sept. 23, 2013).

⁵ Morgan Stanley, "State Water Project Contractors Authority: Response to Request for Qualifications and Proposals for Underwriting Services," at 8 (March 19, 2014).

For example, as a result of a court settlement of past SWP contract-related legal deficiencies, DWR prepares biannual reliability reports that recognize that full delivery of SWP contract amounts is highly improbable if not impossible in all but the rarest of wet years.⁶ Similarly, DWR and others have conducted extensive analysis of the projected impacts of climate change on SWP deliveries, which uniformly predict reduced deliveries during the duration of the proposed extension of the contracts. For instance, the May 2009 report prepared by DWR for the California Climate Change Center estimates that Delta exports will be reduced by 7 to 10 percent by 2050, and by 21 to 25 percent by 2100.⁷ Moreover, scientists and resource agencies recognize that the main source of SWP water, the Sacramento-San Joaquin River Delta, is in critical decline and needs increased flows (and reduced diversions) to recover.⁸ Indeed, in 2009, the Legislature passed a law requiring that the State reduce reliance on the Delta as a source of water supply in recognition of ecological problems associated with excessive water diversions and other vulnerabilities of relying on the Delta as a future source of water supply.⁹ The same act established co-equal goals for the Delta of improving the reliability of water supplies and restoring the Delta ecosystem.¹⁰ Finally, several recent reports have acknowledged the extensive overallocation of water rights in the Delta, in particular, including DWR's permits for the SWP, which are junior to many of the existing water rights in the system.¹¹

The proposed contract terms need to be revised to reflect these changes in circumstances and the law by reducing contract quantities and otherwise modifying contract terms to reduce water diversions from the Delta.

III. The DEIR Should Consider One or More Alternatives to the AIP that Establish Specific Water Conservation Standards for the Use of State-Supplied Water

Since the SWP contracts were executed, several laws and directives have been adopted requiring more efficient water use. For example, SB 7X 7, passed in 2009, requires urban water suppliers in California to achieve a 20% improvement in water use efficiency per person by 2020, making California the first state to set statewide numeric per capita urban water efficiency targets. Similarly, Governor Brown's

⁶ See generally <http://baydeltaoffice.water.ca.gov/swpreliability/>

⁷ California Department of Water Resources, *Using Future Climate Projections to Support Water Resources Decision Making in California*, May 2009, CEC-500-2009-052-F at page 3, available online at: http://www.water.ca.gov/pubs/climate/using_future_climate_projections_to_support_water_resources_decision_making_in_california/usingfutureclimateprojitosuppwater_jun09_web.pdf.

⁸ See, e.g., SWRCB 2010 Public Trust Flows report; 2008 USFWS delta smelt Biological Opinion; 2009 Salmonid Biological Opinion; DFW consistency determinations adopting both BiOps under state law; DFW longfin smelt Incidental Take Permit.

⁹ Water Code section 85021.

¹⁰ Water Code sections 85023, 85032, 85054, 85300.

¹¹ See, e.g., Grantham and Viers, "100 Years of California's Water Rights System: Patterns, Trends and Uncertainty," IOPScience (August 2014).

California Water Action Plan calls for Californians to make water conservation a “way of life,” including calling for exceeding the SB 7x7 targets and for state agencies, in particular, to demonstrate state leadership “to increase water efficiency, use recycled water, and incorporate stormwater runoff capture and low-impact development strategies.” DWR can and must take that directive to heart in proposing changes to SWP contracts, which control the largest block of water under state control.

The DEIR must consider amendments to the contracts that ensure that they comply with the Delta Stewardship Council’s Delta Plan WR Policy 1. In addition, the DEIR should incorporate measures to comply with Delta Plan WR Recommendation 2, which states:

The California Department of Water Resources should include a provision in all State Water Project contracts, contract amendments, contract renewals, and water transfer agreements that requires the implementation of all State water efficiency and water management laws, goals, and regulations, including compliance with Water Code section 85021.

Delta Plan at 103. Consistent with the Delta Plan, DWR should amend the contracts to include provisions which require implementation and achievement of the requirements of the Water Conservation Act of 2009, including requirements to prepare adequate agricultural and urban water management plans, comply with agricultural water measurement regulations and tiered pricing, implement urban water conservation practices, and achieve urban per capita water conservation requirements.

In addition, the contracts should include longer range water conservation targets and requirements beyond 2020. Finally, the DEIS should consider economic incentives for contractors who do not request their full contract amounts.

IV. The DEIR Should Consider Alternative Cost Recovery Mechanisms

The DEIR must recognize that cost recovery mechanisms for the SWP influence the consumption of project-supplied water. The current take-or-pay framework of large fixed charges regardless of quantities of water delivered has the effect of encouraging each contractor to maximize its take of SWP water each year. With more than 20 years left to run in the original project repayment period, alternative cost recovery arrangements should be evaluated that would offer value to contractors that take less than their allocation while protecting the SWP’s financial security. These could include: a) distributing fixed charges based on the relative share of prior-year deliveries (i.e., consumption-based fixed charges); b) supplementing lower fixed charges with volume-based variable charges; c) allowing contractors to sell or exchange local conservation savings through the SWP; and d) reserving some portion of SWP water for auction. These and similar alternatives should be evaluated in the DEIR.

V. The DEIR Must Consider Contract Extension Periods of Less Than 50 years

There is no compelling rationale in the AIP to extend the SWP’s water supply contracts for 50 years beyond their current expiration on December 31, 2035. Indeed, the establishment of pay-as-you-go procedures for certain project expenditures after 2017 as contemplated by the AIP could be implemented without extending the term of the current contracts at all. To maintain its public trust responsibilities, DWR must retain the flexibility to operate the SWP with an “adaptive management”

approach, taking into account changing conditions over time. The EIR should fully consider maintaining the current expiration date, as well as a reasonable number of extension periods for increments of less than 50 years.

VI. The Proposed Project and DEIR Must Ensure that the Revised Contracts Allow For Cost Reimbursement Consistent With Law

Article XIII of the AIP purports to define certain costs as reimbursable under revised SWP contracts and to exclude certain costs. As currently drafted, and without greater definition, this provision appears to violate CEQA's requirement that SWP Contractors mitigate for significant environmental impacts associated with operation of the SWP to the extent feasible. It also may run afoul of requirements of SB7x-1 and DWR's pending proposal to obtain a Natural Communities Conservation Plan permit and Habitat Conservation Plan permit as part of BDCP. Further, it is not clear how this provision relates to the Davis-Dolwig Act, which establishes as "policy of this State that recreation and the enhancement of fish and wildlife resources are among the purposes of state water projects." Water Code sec. 11900.

Article XIII allows DWR to include as reimbursable costs incurred "for the preservation of fish and wildlife," but attempts to exclude costs "incurred for the enhancement of fish and wildlife or for the development of public recreation." The AIP fails to define "preservation" vs. "enhancement," making it impossible to determine what activities would be considered reimbursable under this proposal. Currently, the SWP has extensive obligations to restore over 25,000 acres of fisheries habitat, in tandem with the federally-operated Central Valley Project, under the delta smelt and salmonid biological opinions issued pursuant to state and federal law. Those obligations, along with other existing obligations, should be included as reimbursable costs.

In addition, the Delta Reform Act, enacted as SB7x-1 in 2009, prohibits initiating construction of any Delta conveyance facility until "the persons or entities that contract to receive water from the State Water Project ... have made arrangements or entered into contracts to pay for both of the following:

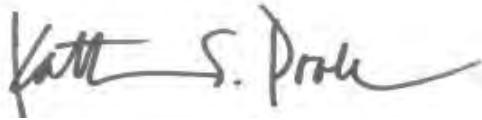
- (a) The costs of the environmental review, planning, design, construction, and mitigation, including mitigation required pursuant to Division 13 (commencing with Section 21000 of the Public Resources Code), required for the construction, operation, and maintenance of any new Delta water conveyance facility.
- (b) Full mitigation of property tax or assessments levied by local governments or special districts for land used in the construction, location, mitigation, or operation of new Delta conveyance facilities."

Water Code sec. 85089. Article XIII appears to conflict with this requirement. As discussed above, DWR cannot lawfully segregate its pending proposal for a new Delta conveyance facility from the current proposal to extend SWP contracts because the two proposals are inextricably intertwined.

Finally, DWR seeks to permit BDCP as an NCCP under state law and a Habitat Conservation Plan under federal law. Those statutes have specific obligations with regard to recovery or "enhancement" of imperiled fish and wildlife that go beyond mere avoidance of jeopardy, as well as specific requirements with regard to ensuring funding over the lifetime of the project. To the extent that Article XIII proposes to exclude from reimbursement costs incurred for enhancing fish and wildlife, it may run afoul of these statutes, in conflict with DWR and some SWP contractors' proposal for BDCP.

Thank you for the opportunity to provide our comments at this stage of the proceedings. We look forward to extensive participation and involvement as this important process moves forward.

Sincerely,

A handwritten signature in black ink, appearing to read "Kath S. Poole". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Katherine S. Poole
Senior Attorney

A handwritten signature in black ink, appearing to read "Edward R. Osann". The signature is cursive and somewhat stylized, with a long horizontal stroke at the end.

Ed Osann
Senior Policy Analyst